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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

Republic of Korea

1. The Committee considered the second periodic report of the Republic of Korea on articles 1 to 15 of the Covenant (E/1990/6/Add.23) at its 12th, 13th and 14th meetings (E/C.12/2001/SR.12, 13 and 14) held on 30 April and 1 May 2001 and adopted at its 26th meeting (E/C.12/2001/SR.25), held on 9 May 2001, the following concluding observations.

A. Introduction

2. The Committee expresses its appreciation to the State party for the comprehensive report and for the written replies to its list of questions (E/C.12/Q/REPOFKOR/2). The Committee notes with satisfaction the presence of a large expert delegation which presented the report and which approached the dialogue in a frank and constructive manner. The Committee notes, however, that the report failed to include information on several important areas and updated statistics, particularly on the critical situation following the financial crisis, although this was partly remedied in the written and oral information subsequently provided to the Committee.

3. The Committee regrets that most of its suggestions and recommendations contained in its previous concluding observations, adopted upon examination of the initial report, have not been implemented.

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B. Positive aspects

4. The Committee notes with satisfaction the significant and rapid economic recovery from the 1997-1998 financial crisis in the Republic of Korea, the present open climate towards human rights generally, and the advances recently realized in the enjoyment of some economic, social and cultural rights.

5. The Committee notes with satisfaction the adoption of a wide range of laws and programmes aimed at ensuring an adequate standard of living for all persons, including the National Basic Livelihood Security Act of 1999, the Employment Insurance Act, the National Pension Scheme the National Health Insurance Scheme and the Industrial Accident Compensation Act. It welcomes the extended application of the minimum wage to workers in all enterprises, whereas the minimum wage had previously been applicable only to workers in enterprises employing more than 10 persons.

6. The Committee takes note of the recent establishment of the Ministry for Gender Equality. It also notes with satisfaction the actions taken to grant women equality with regard to employment, marriage to foreigners, equality in the registration of children, and the possibility of passing on their family name to their children. It further welcomes the Child Welfare Act and the programmes in place to significantly expand public and private childcare facilities, which are encouraging women's participation in remunerative activities.

7. The Committee welcomes the recent opening of an office of the United Nations High Commissioner for Refugees in Seoul, through which applications for asylum can be processed.

C. Factors and difficulties impeding the application of the Covenant

8. The Committee notes that the State party is experiencing a period of major socio-economic transition that affects its ability to comply with its obligations under the Covenant.

9. The Committee notes the continued negative effects on the enjoyment of economic, social and cultural rights of the pervasive "fortress mentality", which is enforced by the National Security Law. Moreover, the high level of defence expenditure is in contrast with the shrinking budget for key areas of economic, social and cultural rights.

10. The Committee notes that deeply rooted traditions and cultural prejudices marginalize certain categories of persons, such as migrant workers, and many women.

11. The Committee notes that the "economy-first" approach adopted by the State party has resulted in a low priority being placed on the protection of economic, social and cultural rights. This has led to the marginalization of certain groups in society in such matters as housing, social welfare and health care.

D. Principal subjects of concern

12. The Committee is concerned that the State party did not take into account its Covenant obligations when negotiating with international financial institutions to overcome its financial crisis and restructure its economy. The overreliance on macroeconomic policies has had profound negative effects on the enjoyment of economic, social and cultural rights in that there have been large-scale employee dismissals and lay-offs, a significant deterioration in employment stability, growing income inequalities, an increasing number of broken families and marginalization of a large number of persons.

13. The Committee views with concern the fact that the rapid pace of economic development has not been matched by efforts to guarantee economic, social and cultural rights. The Committee is concerned that, in such a situation, some rights or the rights of some groups are being sacrificed for the sake of economic recovery and market competitiveness.

14. The Committee is concerned that the data-collection methods of the State party do not seem to be fully reliable. Examples include data on unemployment and underemployment, housing, poverty and migration. In some cases, there were very large gaps between the statistics provided by the Government and those from other sources, including the agencies of the United Nations and non-governmental organizations, which has serious implications for the effectiveness of government policies and programmes designed to address the needs of the most vulnerable and marginalized people.

15. The Committee regrets that no adequate effort has been made since the examination of the initial report to ensure that the rights provided for in the Covenant are fully enshrined in law. The Committee notes with concern that, according to the Constitution, the status of the Covenant is equal to that of domestic laws, which means that the protection of some rights may be overridden by subsequently enacted laws or special laws. It regrets the lack of clarity as to whether all Covenant rights can be invoked in domestic courts and further regrets the absence of any case law.

16. Notwithstanding the advances noted in paragraph 6, the Committee notes with deep concern the continued unequal status of women. Persisting problems include the traditional preference for sons, which is manifested in a high incidence of induced abortions of girl foetuses that threaten the reproductive rights of women; the patriarchal head-of-family system (ho-ju) as defined in law; the high incidence of domestic violence; the relatively low access by women to tertiary education; discrimination against women and sexual harassment in the workplace; and a large gap in the average salaries paid to women and to men.

17. The Committee regrets that the specific conditions of work to which the so-called "irregular workers" are subject have not been clarified during the dialogue. Information from independent sources indicate that "irregular" workers are distinguished from "regular" workers, although they often perform the same tasks, in that irregular workers receive lower wages, pension benefits, unemployment and health benefits and have less job security. It also notes that the proportion of irregular workers in the general labour force has grown to half, the great majority of them women.

18. The Committee is alarmed at the rising incidence of industrial accidents in recent years, which appears to be the result of a relaxation of the standards governing industrial safety and of the insufficient number of on-site inspectors.

19. The Committee notes that teachers can legally enjoy their right under article 8 of the Covenant to form and belong to trade unions. However, it is concerned that they are still prevented from participating in collective bargaining and in strikes, a right guaranteed in both the Covenant and in the national Constitution (art. 33). While cognizant of the elevated status that is traditionally bestowed on teachers in Korean society, the Committee considers it inappropriate for the Government to assume the role of guardian of traditions that prevent the exercise of this fundamental right.

20. The Committee is also concerned that the laws governing industrial actions are not transparent and appear to give the authorities inordinate discretion in determining the legality of strikes. In this regard, it considers entirely unacceptable the approach taken to criminalize strike activities. In addition, the Committee is deeply disturbed by the excessive force used by the police against recent labour demonstrations that had been set off by massive lay-offs. The Committee considers the combined effect of these circumstances to be a clear negation of the rights provided for in article 8 of the Covenant.

21. The Committee is concerned about the rising incidence of sexual exploitation of children, child labour, and hardships caused by a breakdown of the family. In this regard, the legal protection accorded to children does not appear to have been adequately implemented.

22. The Committee notes with concern the shifting population distribution from rural to urban areas, with most government programmes to develop infrastructure, education, health care and other essential facilities being highly concentrated in the urban areas. Urban migration of younger people has left many older persons to care for family farms in the countryside. The Committee regrets that the situation of persons living in rural areas has not been sufficiently dealt with during the present dialogue.

23. While welcoming the adoption of programmes to supplement the incomes of those living under the poverty line, notably through the National Basic Livelihood Security Act, the Committee has doubts about the adequacy of the assistance given. The eligibility criteria are apparently so rigid as to exclude many of the poor, and the amount of financial assistance regularly awarded can reportedly be drastically reduced without notice and without reason. The National Pension Scheme, which is said to have nationwide coverage and be open to all persons, nevertheless fails to provide for an inordinate proportion of the workforce who are reaching pensionable age but have not been able to contribute to the system for a sufficient number of years.

24. The Committee notes with concern that despite the State party's attempts to promote employment of the disabled, the previous 2 per cent quota for workers with disabilities in enterprises employing over 300 employees has not been met, even within government agencies. The Committee is also concerned that enforcement mechanisms for this purpose do not seem to have been established.

25. The Committee regrets the lack of accurate information concerning the number of forced evictions and the specific conditions under which they can occur, in accordance with the Committee's General Comment No. 7. The Committee is also concerned that victims of private construction projects are not provided with compensation or temporary lodging, unlike private homeowners who are evicted as a result of public projects. Moreover, the Committee is concerned about the affordability of housing for lower income groups, especially the vulnerable and marginalized groups; about the use of "vinyl houses" for dwellings, which pose grave risks to their dwellers; and about the increasing number of the homeless.

26. The Committee is disturbed that the portion of the government budget allocated to health, which is under 1 per cent is low and declining. It is concerned at the predominance of privately operated health care facilities - estimated to exceed 90 per cent of all health care facilities, a trend that accelerated in the wake of the financial crisis - and the consequent negative implications for access to health care by the most marginalized sectors of society.

27. The Committee notes with concern that the low quality of education in public schools is compelling families to supplement the education of their children with private instruction, thereby placing an undue financial burden on families, especially those in lower-income groups.

28. The Committee also notes with concern the predominance of private institutions in higher education, a fact detrimental to the lower income groups. It further notes that over two thirds of the students in higher education are males, which is contrary to the principle of gender equality.

29. The Committee notes that education is free and compulsory only at the primary school level, which is not commensurate with the State party's high level of economic development.

30. The Committee is concerned that the present criteria for granting refugee status appear to be far too stringent, with only one application having been approved to date.

31. The Committee notes with concern that human rights education has not yet been formally incorporated as a required subject for all members of those professions that are most directly involved in the promotion and protection of economic, social and cultural rights.

32. The Committee is concerned that the National Security Law is being used to curtail the activities of intellectuals and artists. Under this law, not only are their works being censored, confiscated or destroyed, but the intellectuals and artists themselves are being subjected to criminal prosecution.

E. Suggestions and recommendations

33. The Committee reiterates and affirms its suggestions and recommendations contained in its previous concluding observations on the State party's initial report and urges the State party to take concrete steps to implement them.

34. The Committee emphasizes that a human rights approach to government actions must begin with a proper understanding of the actual situation in respect of each right, accurate identification of the most vulnerable groups, and the formulation of appropriate laws,

programmes and policies. It urges the national statistical agencies and relevant ministries to review the ways in which data relating to all rights are collected through the lens of the Covenant.

35. While noting the enactment of a new law that establishes a national human rights commission, the Committee emphasizes the importance of establishing the commission in full conformity with the 1991 Principles relating to the status of national institutions (the "Paris Principles"), and in this context, draws attention to its General Comment No. 10.

36. The Committee urges the State party to accord the Covenant a legal status that would enable it to be invoked directly within the domestic legal system. It recommends that such status be superior to all national laws, whether precedent, antecedent or special, and refers in this regard to its General Comment 9.

37. The Committee recommends that the State party allocate the necessary resources to enable the newly established Ministry for Gender Equality to function effectively and to apply a gender perspective in legislation and in society.

38. The Committee recommends that detailed information on the situation of "irregular" workers be included in the third periodic report. In the meantime, it strongly recommends that the State party reconsider the status of irregular workers and guarantee their rights under the Covenant.

39. The Committee reminds the State party that the provisions of article 8 guarantee for all persons the right to freely form and join trade unions, the right to engage in collective bargaining through trade unions for the promotion and protection of their economic and social interests, as well as the right to strike. The Committee urges the State party to desist from using criminal proceedings against striking trade unions. It also urges the State party to refrain from using any force beyond that absolutely necessary for the maintenance of public order. The Committee recommends that the right of teachers and other civil servants to form and join trade unions, to engage in collective bargaining and to strike should be guaranteed in law and in practice. Detailed information on this is requested in the third periodic report.

40. The Committee recommends that the State party take more effective measures to combat the sexual trade of children and child labour, as well as expand its programmes directed at the protection and rehabilitation of the victims of such practices.

41. The Committee recommends that the State party establish a focal point within the Government for dealing with complaints or appeals for assistance on housing matters. It recommends that protection be provided, such as compensation and temporary housing, to victims of forced evictions resulting from private development projects. The State party should also ensure that adequate housing is available to members of vulnerable or marginalized groups. Moreover, the State party should take immediate measures to assist all those who are homeless or living in exceptionally substandard conditions, such as "vinyl houses".

42. The Committee recommends that the State party establish a plan to strengthen the public education system in conformity with article 13 of the Covenant and General Comment No. 13 of the Committee, and in accordance with the State party's high level of economic development. The plan should include the following elements: a reasonable timetable for specific actions for the introduction of free and compulsory secondary education; a re-examination of the functions and quality of the public education system relative to private education, with a view to strengthening the former and easing the burden on low-income groups imposed by the latter; a study of accessibility of schools at all levels, including tertiary education, and specific actions to be taken to ensure equal access by all sectors of society; and a reassessment of the curricula at all levels of instruction directed at promoting respect for human rights and fundamental freedoms. Information on this matter is requested in the third periodic report of the State party.

43. Insofar as traditional practices pose an obstacle to the fulfilment of some rights or perpetuate discrimination of any kind, including the preference for sons and the abortion of girl foetuses, the State party should carry out large-scale public campaigns to promote understanding among the general public about human rights.

44. The Committee recommends that the State party prepare, in accordance with the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights, in cooperation with the Office of the High Commissioner for Human Rights, a national human rights plan of action, taking into account the observations made by this and other treaty bodies. It requests that information on such a national plan be provided in the State party's third periodic report.

45. The Committee urges the State party to provide detailed information in its third periodic report, to be submitted by 30 June 2006, on conditions in the rural sector and the situation regarding agriculture and food production.